

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carter Garfield	Team: Squad #10	CCRB Case #: 202005608	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/11/2020 11:30 AM	Location of Incident: § 87(2)(b)	Precinct: 01	18 Mo. SOL 2/11/2022	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 08/11/2020 3:01 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 08/11/2020 3:01 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An Officer			
2. POM Aramis Rosario	24754	958022	001 PCT
3. POM Luigi Tirro	05819	964803	001 PCT
4. POM Benny Li	17277	966666	001 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Castro	01441	964430	001 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An Officer	Off. Language: An officer made remarks to § 87(2)(b) based upon ethnicity.	§ 87(2)(b)
B.POM Aramis Rosario	Force: Police Officer Aramis Rosario used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Aramis Rosario	Abuse: Police Officer Aramis Rosario interfered with § 87(2)(b)'s use of a recording device.	§ 87(2)(b)
D.POM Aramis Rosario	Abuse: Police Officer Aramis Rosario failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
E.POM Luigi Tirro	Abuse: Police Officer Luigi Tirro failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
F.POM Benny Li	Abuse: Police Officer Benny Li failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)

### Case Summary

On August 11, 2020, § 87(2)(b) called the CCRB to file the following complaint on behalf of himself.

On August 11, 2020, at approximately 11:30 a.m., § 87(2)(b) was in his office building at § 87(2)(b) in Manhattan, when he got into a dispute with an ex-employee. Police were called and PO Rosario, PO Castro, PO Tirro, and PO Li, all of the 1<sup>st</sup> Precinct, responded. The security team at § 87(2)(b) initially barred § 87(2)(b) from re-entry to the building but then allowed § 87(2)(b) to collect his belongings only if officers escorted him.

While § 87(2)(b) collected his belongings from his office, officers allegedly made comments regarding his Egyptian ethnicity and an officer allegedly said, “You people don’t belong here” (**Allegation A: Offensive Language – Ethnicity**, § 87(2)(g)). PO Rosario pushed § 87(2)(b) out of the building (**Allegation B: Physical Force – Push**, § 87(2)(g)). While outside of the building, § 87(2)(b) tried to take a photo of the officers with his cellphone and PO Rosario allegedly tried to take his cellphone away from him (**Allegation C: Abuse of Authority – Interference with recording**, § 87(2)(g)). § 87(2)(b) then requested business cards from PO Rosario, PO Castro, PO Tirro, and PO Li and received one from only PO Tirro (**Allegations D, E, F: Abuse of Authority – Failure to provide RTKA card**, § 87(2)(g)). § 87(2)(b) then left the area. No summons was issued, and no arrest was made.

Body-worn camera footage was obtained from all four officers (**BRs 01 – 05**). Relevant portions will be discussed below.

### Findings and Recommendations

#### **Allegation (A) Offensive Language: An officer made remarks to § 87(2)(b) based upon ethnicity.**

§ 87(2)(b)'s intake call (**BR 06**) provided no details other than stating “the officers refused to provide.”

§ 87(2)(b) provided a brief statement over the phone (**BR 07**) where he explained that on the day of the incident, he had fired an employee (identified by the investigation as § 87(2)(b) who became irate and called 911. Approximately six officers responded to § 87(2)(b) where § 87(2)(b) was called “racial slurs.”

§ 87(2)(b)'s verified statement (**BR 08**) was consistent with his previous statements and provided additional details. § 87(2)(b) explained that he hired § 87(2)(b) to work for him at § 87(2)(b) where he leased office space. After only a couple hours of work, however, § 87(2)(b) fired § 87(2)(b) for being “unfit for the job.” § 87(2)(b) allegedly demanded to be paid for the entire day immediately, but § 87(2)(b) refused and called security to escort her out of the building. § 87(2)(b) called 911 and § 87(2)(b) went down to the lobby to meet with the officers.

§ 87(2)(b) stated that approximately seven officers, members of § 87(2)(b) (a security company), and § 87(2)(b) were in the lobby. § 87(2)(b) stated that he needed to go up to his office to get his blood pressure medication and all seven officers accompanied him to his office floor, where they gave him five minutes to get his medication. Officers also allegedly made comments about his ethnicity and salary, stating at one point, “You people don’t belong here,” “I make more money than you,” “I’m going to make sure you never work on Wall Street again,” along with unspecified racial slurs.

§ 87(2)(b) was unable to specify what racial slurs were said other than, “You people don’t belong here.” Throughout his verified statement, § 87(2)(b) did not cooperate with answering clarifying questions. § 87(2)(b) also stated repeatedly that he captured the entire incident on video but did not cooperate with sending it to the investigation. § 87(2)(b) provided the shield numbers of PO Rosario and PO Tirro from photographs he had taken from the incident (**BR 08**).

§ 87(2)(b) at § 87(2)(b) provided additional details of the incident, screenshots of their security cameras and an incident report filed on the day of the incident (**BR 09, 10**). The incident report filed by § 87(2)(b)

listed § 87(2)(b) and an § 87(2)(b) Ifraimok (**BR 09**).

§ 87(2)(b) stated over email that the incident occurred on the fifth floor of the building. Management was alerted to inspect a complaint of people arguing in the tenant space. The § 87(2)(b) responded and requested that the tenants leave the building. Once all parties involved arrived in the lobby, the police had arrived (at the request of the woman involved in the incident), and everyone went outside of the building. On August 26, 2020, the undersigned spoke briefly with § 87(2)(b) over the phone where she stated one of employees of § 87(2)(b) had accompanied § 87(2)(b) and the officers to the fifth floor. She could not recall the name of the employee. She added that the § 87(2)(b) was on leave indefinitely and could not provide a statement for the investigation (**BR 10**).

A Lexis Nexis search for § 87(2)(b) came back too broad for the investigation to narrow down the search results without additional information (**BR 11**).

PO Rosario, PO Castro, PO Tirro, and PO Li were interviewed for this investigation (**BRs 12 – 15**). None of the officers said or heard another officer make any statements regarding § 87(2)(b)'s ethnicity. As for the comment, "You people don't belong here," PO Rosario stated that it was possible that he said, "You don't belong here" to § 87(2)(b) when they were inside the building, because § 87(2)(b) was trespassing (**BR 12**).

At no point on any of the BWC footage obtained from the incident does an officer make any remark regarding § 87(2)(b)'s ethnicity (**BRs 01-05**). Additionally, the footage captured no officers saying, "You don't belong here" or "You people don't belong here." However, BWC footage from the incident was not comprehensive and did not begin until § 87(2)(b) was exiting the building with officers. Since it was not clear from § 87(2)(b)'s statement who he was making the allegation against, and no video captured the allegation, **Allegation A** is pleaded against "an officer."

§ 87(2)(g)

#### **Allegation (B) Force: Police Officer Aramis Rosario used physical force against § 87(2)(b)**

It was undisputed that PO Rosario placed his hand on § 87(2)(b)'s back as they exited § 87(2)(b).

In his phone and verified statement (**BR 07, 08**), § 87(2)(b) stated he was "pushed around and out of the building" by officers. He did not provide details as to how much force officers used nor did he describe any pain from the force being used.

In his interview, PO Rosario (**BR 12**) stated that the building's security team had initially barred § 87(2)(b) entry to the building, but later allowed him to reenter only to collect his personal belongings and then leave the premises. PO Rosario was not entirely sure why § 87(2)(b) was barred entry, but he thought it was due to § 87(2)(b)'s 911 call. PO Rosario also stated that § 87(2)(b) had been "stalling" the entire time officers were on scene, taking several minutes to collect his belongings from his office upstairs and not listening to officers after being told to leave the building. PO Rosario initially did not recall making any contact with § 87(2)(b) but upon reviewing body-worn camera footage he stated he "lightly pushed" § 87(2)(b) out of the building to "guide" him outside. He added that the only reason was because § 87(2)(b) had not been complying with officer commands to leave the building.

PO Rosario, PO Tirro, and PO Castro consistently described § 87(2)(b) as "out of it" and potentially under the influence of drugs or alcohol (**BR 12-15**).

On PO Rosario's body-worn camera video (**BR 01, 05**), at the 1:18 minute mark, officers are seen walking with § 87(2)(b) in the lobby of § 87(2)(b). A member of the building security team is also with them and is holding a radio. § 87(2)(b) stops in the lobby and begins yelling at the officers, stating that he is going to "write them all up." PO Rosario responds, "C'mon,

let's go outside, you're refusing to leave multiple times," and places his right hand on § 87(2)(b)'s back to push him out of the building. § 87(2)(b) does not fall to the ground or make any indication that he was injured from PO Rosario's actions. The security guard stands by the door as § 87(2)(b) is brought outside.

Patrol Guide 221-01 "Force Guidelines" (BR 16) states that, "When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In situations in which this is not safe and/or appropriate, MOS will use only the reasonable force necessary to gain control or custody of a subject."

In determining whether the use of force is reasonable, members of the service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence."

N.Y. Penal Law § 140.05 states that a person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises (BR 21).

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Aramis Rosario interfered with § 87(2)(b)'s use of a recording device.**

§ 87(2)(b) consistently stated in his phone and verified statement that an officer, identified by the investigation as PO Rosario, tried to take his cellphone away from him and prevented him from taking a photo of the officer (BR 07, 08).

PO Rosario stated (BR 12) that § 87(2)(b) began filming the officers inside of the building and demanded their names and shield numbers. Once they removed § 87(2)(b) from the building, the officers allowed § 87(2)(b) to take photographs of their shields and name plates. PO Rosario stated that § 87(2)(b) was yelling at officers and, at one point, put his phone "six inches" from his face. PO Rosario told § 87(2)(b) to "get out of his face" and put one of his hands up. He clarified that he did not do so to prevent § 87(2)(b) from taking a photo of his shield.

PO Rosario's body-worn camera footage (BR 01, 05), was consistent with his statement. Outside of § 87(2)(b) § 87(2)(b) takes a photo of each officer's shield and name plate, and no officer prevents him from doing so. At the 1:59 minute mark, § 87(2)(b) puts his phone in PO Rosario's face, who reaches out as if to push § 87(2)(b)'s phone down. Since the body camera is on PO Rosario's chest, it is difficult to determine how close § 87(2)(b) got to PO Rosario, but it was estimated to be within approximately one foot. § 87(2)(b) says, "Don't touch my phone." PO Rosario says, "I'm just trying to say, I have my space, that's all I'm asking." PO Rosario does not

appear to touch § 87(2)(b)'s phone.

During his verified statement, § 87(2)(b) provided PO Rosario's shield number from a photo he took of PO Rosario during the incident (BR 08).

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Aramis Rosario failed to provide § 87(2)(b) with a business card.**

**Allegation (E) Abuse of Authority: Police Officer Luigi Tirro failed to provide § 87(2)(b) with a business card.**

**Allegation (F) Abuse of Authority: Police Officer Benny Li failed to provide § 87(2)(b) with a business card.**

§ 87(2)(b) consistently stated that officers did not provide business cards (BRs 06-08).

PO Castro (BR 14) stated that § 87(2)(b) asked for business cards from all officers. He stated that § 87(2)(b) did not ask each officer directly, but rather said to all four officers, "I want business cards." PO Castro provided a business card to § 87(2)(b). PO Castro was not sure why the other officers did not provide a business card, but he did state that § 87(2)(b) left the area upon receiving his business card. § 87(2)(b) did not continue to ask the other officers for business cards after receiving PO Castro's.

PO Rosario (BR 12) did not recall § 87(2)(b) asking for a business card. He further stated that it was his understanding that officers were to provide a business card only during a vehicle stop if the civilian requested one.

PO Tirro (BR 13) said § 87(2)(b) asked all officers on scene for business cards. He stated that he did not provide § 87(2)(b) with a business card because he did not have any on him at the time.

PO Li (BR 15) did not recall if § 87(2)(b) asked for a business card nor did he recall providing one. PO Li stated that he did not believe officers were required to provide a business card to civilians during jobs such as this one. After reviewing body-worn camera footage, PO Li said that he did not hear § 87(2)(b) request a business card and was not within earshot, so he did not know that § 87(2)(b) requested them.

In PO Rosario's body-worn camera footage (BR 01, 05), at the 1:17 minute mark, § 87(2)(b) asks the officers for business cards in the lobby. There appears to be nobody else in the lobby other than the officers, the security guard, and § 87(2)(b). When § 87(2)(b) asks for business cards, nobody is speaking at the same time as him. PO Rosario replies, "Come on, let's go outside," and the group exits the building. At the 1:40 minute mark, PO Rosario says, "You done? Have a nice day." § 87(2)(b) responds, "You guys aren't giving me your business cards." The timestamp of this occurring on PO Rosario's body-worn camera is 12:39:51 p.m. § 87(2)(b) asks for business cards clearly and loudly and there is little background noise outside of the building.

PO Li's body-worn camera footage (BR 04, 05) audio begins after § 87(2)(b) asks for business cards. However, at 12:39:51 on PO Li's body-worn camera, while there is no audio, PO Li is facing § 87(2)(b) and is approximately ten feet away from him.

§ 87(2)(b) is heard asking for business cards on PO Tirro's body-worn camera (BR 03, 05) at the 1:18 minute mark and the 1:39 minute mark. At 02:05, PO Tirro's BWC also captures PO Castro attempting to hand his business card to § 87(2)(b). PO Tirro taking it and handing it to him while saying, "Get out of here."

§ 87(2)(b) is heard asking for business cards on PO Castro's body-worn camera (BR 02, 05) at the 1:08 minute mark and the 1:29 minute mark.

While PO Li said he was not within earshot of § 87(2)(b) when he asked for business cards, on all body-worn camera footage, that contains audio, § 87(2)(b) is twice heard clearly asking for business cards. While it could not be determined how close PO Li was to § 87(2)(b) upon the first request, when he asked the second time PO Li was facing § 87(2)(b) and was within ten feet of him. There was little to no background noise when § 87(2)(b) requested business cards the second time, and absolutely no background noise the first time.

New York City Administrative Code § 14-174 (BR 22) states that an officer will offer a business card to any person requesting identifying information.

Patrol Guide 203-09 “Public Contact – General” states that officers are “to provide business cards, as appropriate, at the request of members of the public.” Officers are also required “to offer a generic Right to Know Business Card – General with identification information written down legibly, if supply of pre-printed Right to Know Business Cards becomes depleted” (BR 17).

§ 87(2)(g)

#### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 18)
- PO Rosario has been a member of service for six years and this is the first CCRB complaint in which he is listed as a subject.
- PO Tirro has been a member of service for three years and this is the third CCRB complaint and third allegation in which he has been listed as a subject. PO Tirro has no substantiated allegations § 87(2)(g)
- PO Li has been a member of service for two years and this is the second CCRB complaint and second allegation in which he has been listed as a subject. PO Li has no substantiated allegations § 87(2)(g)

#### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no record of any convictions in New York City (BR 19).
- On April 6, 2021, a FOIL request to the Office of the Comptroller for any Notice of Claim regarding this incident was sent and will be added to the case file upon receipt (BR 20).

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Squad No.: 10

Investigator: Carter Garfield Inv. Garfield 4/6/21  
Signature Print Title & Name Date

Squad Leader: Eric Rigie IM Eric Rigie 5/10/2021  
Signature Print Title & Name Date

**CCRB Case # 202005608**

Reviewer:

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Signature

\_\_\_\_\_  
Print Title & Name

\_\_\_\_\_  
Date